

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lenfest Broadcasting, LLC)	CSR-8816-M
)	Docket No. 13-174
v.)	
)	
RCN Telecom Services of Philadelphia, LLC)	
)	
Must-Carry Complaint Regarding Carriage of)	
WMCN-TV, Atlantic City, New Jersey)	

To: Office of the Secretary
Attn: Chief, Media Bureau

OPPOSITION TO MUST CARRY COMPLAINT

RCN Telecom Services, LLC (“RCN” or the “Company”) hereby opposes the “Must-Carry Complaint” (the “Complaint”) filed by Lenfest Broadcasting, LLC (“Lenfest”), licensee of WMCN-TV, Atlantic City, New Jersey (“WMCN” or the “Station”) in the above-captioned proceeding. RCN respectfully submits that the Complaint should be denied.

The Complaint requests that the Commission order carriage of WMCN on RCN’s “cable systems serving Delaware County, Pennsylvania”.¹ The Complaint should be denied, however, because WMNC does not deliver a signal of sufficient strength to the principal headend serving the cable communities at issue (the “Cable Communities”).²

¹ Complaint at 1.

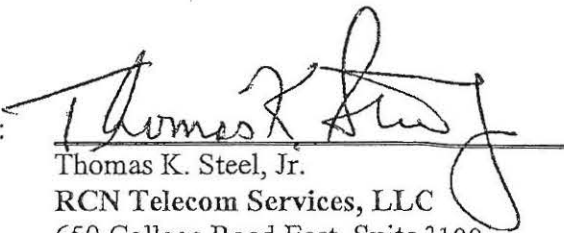
² See Complaint, Exhibit A (listing the communities served by RCN, in which the Station is seeking carriage).

The delivery of an adequate signal to the system's "principal headend" is a necessary precondition to invoking must carry rights.³ RCN's principal headend serving the Cable Communities is located in Northampton, Pennsylvania, approximately 106 miles away from WRCN's city of license, Atlantic City, New Jersey.⁴ The signal strength tests attached hereto as Exhibit 2 confirm that WMNC's off-air signal does not meet the strength and quality requirements set forth in the Commission's rules.

Although WMCN has the opportunity pursuant to the FCC Must Carry Rules, to provide equipment and bear the costs of delivering [a good quality] signal via alternative means,"⁵ the Station's Chief Engineer, Gary Reed, has not pursued communications with RCN for any such alternative signal delivery mechanism, despite having conceded that WMCN does not deliver an adequate off-air signal to the Northampton headend.

For the reasons stated herein, RCN hereby requests that the Commission issue an order dismissing or denying WMCN's Complaint.

Respectfully submitted,

By: 
Thomas K. Steel, Jr.
RCN Telecom Services, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
(609) 751-9309

³ See 47 U.S.C. § 534(h)(B)(iii) and 47 C.F.R. § 76.55(c)(3).

⁴ See Exhibit 1.

⁵ Complaint at 3.

DECLARATION OF JEFF WINN

I, Jeff Winn, declare, under penalty of perjury that:

1. I am Director of Network Engineering for RCN Telecom Services, LLC.
2. I have read the foregoing Opposition and am familiar with the contents thereof and the matters referred to therein.
3. The facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.

Date:

8/22/2013

Jeff Winn

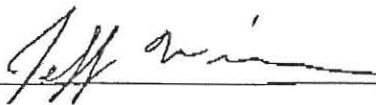


EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

LENFEST BROADCASTING, LLC)

v.)

RCN TELECOM SERVICES OF PHILADELPHIA, LLC)

Must-Carry Complaint Regarding Carriage of)
WMCN-TV, Atlantic City, New Jersey)

CSR -

To: Office of the Secretary
Attn: Chief, Media Bureau

MUST-CARRY COMPLAINT

Lenfest Broadcasting, LLC (“Lenfest”), licensee of full-power commercial television station WMCN-TV, Atlantic City, New Jersey (Facility ID No. 9739) (“WMCN-TV” or the “Station”), by its attorneys and pursuant to Sections 76.7 and 76.61 of the Commission’s rules,¹ hereby files this must-carry complaint against RCN Telecom Services of Philadelphia, LLC (“RCN”) for its failure to carry the signal of WMCN-TV on cable systems serving Delaware County, Pennsylvania (collectively, the “Communities”).²

¹ 47 C.F.R. §§ 76.7, 76.61.

² See Exhibit A.

I. WMCN-TV Is Entitled to Carriage Because It Is a Qualified Local Commercial Television Station

WMCN-TV is a qualified local commercial television station under the Commission's must-carry rules and, therefore, is entitled to carriage in the Communities.³ Under relevant rules, a full-power station is entitled to carriage if: (1) it is within the same market as the cable system involved, (2) carriage of the station will not cause increased copyright liability for the cable operator, and (3) the station either delivers a good quality signal to the cable system's principal head end or agrees to be responsible for the costs of delivering such a signal to the cable system.⁴

WMCN-TV satisfies each of these carriage conditions. First, WMCN-TV and RCN's cable system are located within the same television market. Pursuant to Section 76.55(e) of the Commission's Rules, a station's television market is defined as its Designated Market Area ("DMA") as assigned by Nielsen Media Research. WMCN-TV is licensed to Atlantic City, New Jersey, and has been assigned by Nielsen to the Philadelphia, Pennsylvania DMA.⁵ Each of the Communities served by RCN are also located in the Philadelphia DMA. RCN's cable system is, therefore, located within the same television market as WMCN-TV.

Second, RCN will not incur additional copyright liability for carriage of WMCN-TV. Because WMCN-TV is located within the same television market as RCN's cable system, the

³ 47 C.F.R. §§ 76.55(c), 76.56(b).

⁴ See 47 U.S.C. § 534(h)(1)(B)(ii)-(iii); 47 C.F.R. §§ 76.55(c), 76.56 (b).

⁵ Television and Cable Factbook 2012 and A-823.

Station is considered a “local signal” under the Copyright Act.⁶ Thus, carriage of WMCN-TV would not expose RCN to increased copyright liability.

Finally, WMCN-TV is capable of delivering a good-quality signal to RCN’s principal head ends. In the event that RCN is unable to receive a good quality signal from WMCN-TV over-the-air, Lenfest has advised RCN that the Station will provide equipment and bear the costs of delivering such a signal via alternative means.⁷

II. RCN Has Failed to Fulfill Its Obligations Under the Rules

By not carrying WMCN-TV in the Communities, RCN is in violation of the Commission’s must-carry rules.⁸ Because the Station did not make an affirmative election by the October 1, 2011 deadline, under Commission rules WMCN-TV is deemed to have elected must carry status for the 2012-2014 election cycle.⁹ To Lenfest’s knowledge, however, RCN is not carrying the Station’s signal in the Communities. By letter dated April 5, 2013, Lenfest provided notice pursuant to Section 76.61(a) of the Commission’s rules that RCN was in violation of its carriage obligations.¹⁰ RCN failed to respond within the requisite 30-day

⁶ See Copyright Act of 1976, 17 U.S.C. § 111(f).

⁷ See Lenfest’s April 5, 2013 demand letter to RCN Telecom Services of Philadelphia, LLC, attached hereto as Exhibit B.

⁸ See 47 C.F.R. § 76.56(b).

⁹ See 47 C.F.R. § 76.64(f)(3).

¹⁰ See Exhibit B.

timeframe or, for that matter, at all.¹¹ Accordingly, Lenfest is forced to file the instant must-carry complaint.¹²

Continued failure to carry WMCN-TV's signal is a violation of the must carry requirements. WMCN-TV is a qualified local commercial television station entitled to carriage. In addition, the Station does not substantially duplicate the signal of any other local commercial television station carried or transmitted by RCN within the DMA, nor does it have a network affiliation duplicating that of a local commercial television station carried by RCN in the DMA.

¹¹ See 47 C.F.R. § 76.61(a)(2). Lenfest's demand letter was mailed via FedEx Priority Overnight mail on Friday, April 5, 2013. See Exhibit C. The letter was delivered on Monday, April 8, 2013. RCN then had thirty days in which to respond. To date, Lenfest has not received a response.

¹² As required by the Commission's rules, this complaint is submitted within 60 days of RCN's failure to respond to Lenfest's demand letters. See 47 C.F.R. §§ 76.61(a)(5)(ii), (a)(2).

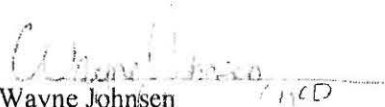
III. Conclusion

In sum, WMCN-TV is legally entitled to carriage in the Communities and has done everything required to secure such carriage. Without basis, RCN has failed to respond to Lenfest's carriage demands or otherwise discuss the matter. Lenfest therefore requests that the Commission order RCN immediately to commence carriage of WMCN-TV in the Communities and take any other enforcement action it deems appropriate.

Respectfully submitted,

LENFEST BROADCASTING, LLC

By:


Wayne Johnsen
John Burgett
Kathryne Dickerson

of

WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
Tel. (202) 719-7000

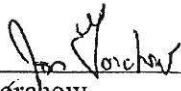
Its Attorneys

 , 2013

DECLARATION OF JON GORCHOW

I, Jon Gorchow, hereby declare as follows:

1. I am President of Lenfest Broadcasting, LLC.
2. I have reviewed the foregoing Must-Carry Complaint and attached Exhibits and certify under penalty of perjury that, to the best of my knowledge, information, and belief formed after reasonable inquiry, they are well grounded in fact and warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law, and not interposed for any improper purpose.

By: 
Jon Gorchow
President
Lenfest Broadcasting, LLC
100 Dobbs Lane, Suite 112
Cherry Hill, NJ 08034
609-569-7280

June 19, 2013

EXHIBIT 2

Exhibit A

RCN Cable Systems Serving Delaware County in the Philadelphia DMA¹

CUID	Community Name	Municipality Type	County Name	Legal Name	PSID
PA3429	Clifton Heights	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3380	Collingdale	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3381	Colwyn	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3427	Darby	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3421	Darby Township	Incorporated Township	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3386	East Lansdowne	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3382	Eddystone	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3383	Folcroft	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3384	Glenolden	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3435	Lansdowne	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3420	Milbourne Borough	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3368	Morton	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3371	Norwood	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3419	Prospect Park Burough	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3372	Ridley	Incorporated Township	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3374	Ridley Park	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3375	Rutledge	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3376	Sharon Hill	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3377	Tinicum	Incorporated	Delaware	RCN Telecom Services of	020192

¹ Lenfest is not aware of any other franchise communities served by the system listed in this Exhibit A. Nevertheless, to the extent this Exhibit A does not list a franchise community served by a system listed herein, such community or system is hereby included.

CUID	Community Name	Municipality Type	County Name	Legal Name	PSID
		Borough		Philadelphia LLC	
PA3377	Tinicum	Incorporated Township	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3422	Upper Darby Township	Incorporated Township	Delaware	RCN Telecom Services of Philadelphia LLC	020192
PA3454	Yeadon	Incorporated Borough	Delaware	RCN Telecom Services of Philadelphia LLC	020192

CERTIFICATE OF SERVICE

I, Deborah A. Rankin, hereby certify that a true and correct copy of the foregoing Consent Motion for Extension of Time was sent via first-class, postage prepaid mail on this 22nd day of August, 2013 to the following:

Wayne Johnsen
John Burgett
Kathryne Dickerson
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006


Deborah A. Rankin